Environmental Protection Agency

Division of Air Pollution Control
Response to Comments

SIP Revision Request for HB 96 – Removal of Ohio's Air Nuisance Rule from the Ohio State Implementation Plan (SIP)

Agency Contact for this Package

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Ohio EPA held a comment period starting August 5, 2025 regarding Ohio's SIP Revision Request for HB 96 - Removal of Ohio's Air Nuisance Rule from the Ohio SIP. In addition, Ohio EPA held a hearing in Columbus, Ohio on September 15, 2025. Ohio EPA then extended the comment period through October 6, 2025. This document summarizes the comments and questions received during the associated comment period, which ended on October 6, 2025, and testimony provided during the hearing.

Ohio EPA reviewed and considered all comments received during the hearing and public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses. All comments in their entirety are attached.

In Support of Retaining the Air Nuisance Rule (ANR) in the State Implementation Plan (SIP)

Comment 1: Commentors requested to retain the ANR, with some specifically asking that the rule be retained as a part of the SIP. They cite a lack of trust of the legislature, in general, and lack of trust they will keep it at the state level if removed from the SIP. That it is a safeguard for citizens and neighboring industries that are polluting and impacting health should

be accountable even if they are meeting air quality standards. Some cite concern of industrial polluters controlling Ohio's government. Also noting a desire for clean air and that dirty air is harmful to people aggravating health conditions or even causing cancer. Some provide examples of events that have occurred, such as the 'Palestine rail disaster' or the 'Cuyahoga River burning'. **(Various)**

One commentor submitted numerous statements from their constituents with similar sentiments as those outlined here. Their comments also included a cover letter with "a handful of those comments" highlighting how important it is:

"We need the Air Nuisance Rule so common people can protect themselves from negligent actions by polluters."

"With all the unexplained and tragically personal cases of cancer in our Ohio population (young & old!), I am stunned to find out that you (our elected officials) and the Ohio EPA want to take away the citizens' ability to go to court to address pollution in our communities."

"Frankly, if the legislature thought this was a positive step that Ohioans supported, it wouldn't have been added quietly at the end of the budget process. This reeks of sneakiness and support of polluters with money to give instead of support for everyday Ohioans."

"Please protect the Air Nuisance Rule and do not rescind it. We live in Cuyahoga County and share the air with many manufacturers. Good industry owners can thrive in business AND be good citizens. Some however choose to sacrifice the lives of their neighbors to make higher profits. The ANR allows us everyday citizens to hold the owners of industries accountable if they pollute the air. We have the right to breathe clean air and to maintain clean air for our children and grandchildren to breathe. Please don't take this right away from us."

"I will fight for maintaining the Air Nuisance Rule. It is my right, as an Ohio tax paying resident, to live in a clean air environment."

"I am firmly opposed to the effort to repeal the Air Nuisance Rule from the Ohio SIP. We need to help people protect their families and communities from unhealthy air pollution. This action will further hurt our land and state from the effect of loosing control to keep people safe. How can we do such a thing? I am very angry with our Mr. DeWine and his cohorts who helped advance this move. Shame on all of you"."
(Neil Waggoner, Sierra Club)

Another commentor discussed the nonattainment issues associated with the Cleveland area and ozone. And that although the local air agency, Cleveland Division of Air Quality, has authority to enforce under the CAA, they have limited resources. The commentor asserts that citizen suits under the ANR are a useful tool when resources are low. Further the commentor says that the ANR can be an incentive for facilities to limit their emissions. **(Caitlin Funk and Fallon Goodlin, Case Western Reserve University)**

Response 1: The Air Pollution Control Board (APCB) adopted the ANR on January 28, 1972 as air pollution rule AP-2-07. Once Ohio EPA was formed on October 23, 1972, the ANR was transferred to the Ohio Administrative Code (OAC) rule 3745-15-07. The ANR has remained in Ohio regulations since its creation in 1972. Even with the request to remove the ANR from the SIP, the rule will continue to be part of Ohio's air regulations. In addition, the State of Ohio continues to recognize common law and statutory nuisance as a cause of action that can be brought in Ohio courts. *See*, *Eller v. Koehler*, 68 Ohio St. 51 (1903); *Patton v. Westwood Country Club Co.*, 18 Ohio App.2d 137 (8th Dist.1969); *State ex rel. Schoener v. Bd. Of Cty. Commrs*., 84 Ohio App.3d 794,799,619 N.E.2d 2 (1st Dist.1992); R.C. 3767.13.

The ANR was adopted in Ohio not as a result of a federal requirement but as a method for Ohio to address emissions that create a nuisance for citizens regardless of the status of compliance with state or federal air quality standards. Ohio EPA intends to retain and implement the ANR as it has for the past 53 years. It is Ohio EPA's goal is to protect the environment and public health by ensuring compliance with all environmental laws, and those regulations adopted under them. This goal applies regardless of a regulation being incorporated into the SIP.

Ohio EPA will continue to work with and support our numerous local air agencies, such as CDAQ, to achieve this goal.

Ohio's demonstration supporting our request to remove the ANR from the SIP identifies that the ANR has no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the NAAQS. Ohio's ANR is not an enforceable emission limitation or other control measure, means, or techniques. Nor does it provide for the enforcement of such a measure, so it is not a required element of Ohio's SIP. While the ANR may improve air quality, it does not "enforce" the NAAQS. Therefore, Ohio EPA continues to believe the ANR should not be a part of Ohio's SIP.

Comment 2: Commentors cite the previous USEPA effort to repeal Ohio's ANR stating that USEPA was in error initially and made the correct decision to fully reinstate the rule and finalized that process earlier this year. **(Various)**

Response 2: In 1972, the APCB adopted several new or modified regulations as a result of the Clean Air Act (CAA) amendments of 1970 which required states to submit State Implementation Plans (SIP) to control emissions of pollutants related to the NAAQS and bring the states back into attainment. On January 31, 1972, Ohio submitted the required SIP to U.S. EPA. In that SIP, Ohio included the entirety of all APCB regulations, including the ANR, without consideration as to the need for all of those regulations to control emissions to attain and maintain the NAAQS.

As stated in Ohio's demonstration supporting our request to remove the ANR from the SIP, As U.S. EPA has noted (85 Fed. Reg. 16309), "in the 1970s and early 1980s, thousands of state and local agency regulations were submitted to EPA for incorporation into SIPs, ostensibly to fulfill the new Federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the CAA. Due to time and resource constraints, EPA's review of these submittals focused primarily on the rules addressing the new substantive requirements of the CAA, and we approved many other elements into the SIP with minimal review. We now recognize that some of these elements may be appropriate for state and local agencies to

adopt and implement but should not become federally enforceable SIP requirements."

In 2020, U.S. EPA concluded it had erred by including the ANR in Ohio's SIP and removed the ANR using the error-correction mechanism under the authority of section 110(k)(6) of the CAA. In 2024, U.S. EPA's reconsideration found "its original determination was deficient for two reasons: (1) because EPA failed to adequately consider the ANR's use in enforcement of the NAAQS, and (2) because EPA failed to conduct an anti-backsliding analysis pursuant to section 193 of the CAA." (89 FR 13304)

In making its final determination in January, 2025, U.S. EPA left open the possibility that the State could withdraw the ANR by noting that "there is nothing to stop Ohio from undertaking the SIP revision process and exercising its 'continuing authority to revise choices about the mix of emission limitations,'…." (90 FR 6814). With this submittal, Ohio EPA is addressing the deficiencies cited by U.S. EPA. Ohio EPA has concluded that the two issues raised by U.S. EPA do not bar removal of the ANR from the SIP pursuant to a SIP revision request.

Comment 3: Some cite that it is a tool for the State of Ohio itself to carry out enforcement actions against polluters to require them to comply with the Clean Air Act and that there are recent examples of the State of Ohio utilizing the ANR in enforcement actions. Further, they cite that while state regulations may remain, relying solely on the Ohio EPA for enforcement removes a key enforcement avenue and shifts the burden entirely to a single state agency and this creates a less robust and less responsive system for addressing pollution problems. **(Various)**

One set of commentors state: "Tellingly absent from OEPA's purported 110(*l*) demonstration is any discussion of the prevalent use of the ANR as a tool to enforce the NAAQS. The purpose of the SIP, as stated in the CAA in Section 110 is "attainment, maintenance, *and enforcement*…" of the NAAQS. 42 U.S.C. § 7410 (emphasis added). In fact, the Sixth Circuit recognized that the ANR had been used by citizens and the state of Ohio for NAAQS enforcement. *Sierra Club v. United States EPA*, 60 F.4th 1008, 1018 (6th Cir. 2023). Even Ohio has admitted to using the ANR to enforce

the NAAQS. Ex. 5, October 19, 2022 letter to the Sixth Circuit Clerk." **I**n addition, the commentors included more details of specific cases, including exhibits, in the full set of comments attached. **(D.David Altman and Justin D. Newman; AltmanNewman Co. LPA, including comments from The Ohio Environmental Council and Case Western Reserve University)**

Another commentor states "The CAA mandates that the U.S. EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment or reasonable further progress of a NAAQS. Accordingly, the Ohio EPA claims in its public notice of removal that the ANR is not used to comply with CAA determined NAAQS. That is false. The ANR has provided both citizens and the government with the opportunity to enforce CAA standards through nuisance suits. The Sixth Circuit Court of Appeals acknowledged Ohio's utilization of the ANR recently in *Sierra Club v. United States EPA*." **(Caitlin Funk and Fallon Goodlin, Case Western Reserve University)**

Response 3: As stated in the Ohio Attorney General comments submitted on U.S. EPA's proposed withdrawal, the ANR is not an enforceable emission limitation or other control measure, means, or technique. Nor does it provide for the enforcement of such measures, so it is not a required element of Ohio's SIP. While the ANR may improve air quality, it does not "enforce" the NAAQS.

Under the Clean Air Act, the NAAQS are not directly enforceable against regulated facilities. Rather, the states must develop plans, known as a state implementation plans or SIPs, that will achieve and maintain the NAAQS. 42 U.S.C. § 7410.

Each State arrives at its state plan to implement, maintain, and enforce the federal standards set for the NAAQS criteria pollutants. 42 U.S.C. § 7410(a). Those plans must include "enforceable emission limitations and other control measures, means, or techniques." 42 U.S.C. § 7410(a)(2)(A). To assure that a SIP meets these requirements, U.S. EPA requires "[m]odeling information required to support the proposed revision, including input data, output data, models used, justification of

model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis." 40 C.F.R. Part 51 – Appendix V, 2.2(e). Thus, the elements of a SIP must have measurable, quantifiable impacts on the NAAQS criteria pollutants.

A State may, for its own purposes however, have other regulations that have the effect of improving air quality, but which do not have NAAQS compliance implications. And unless those provisions were tied to the modeled air impacts and presented to EPA for approval as part of the SIP, they cannot constitute required elements of the SIP. For example, a state may choose to regulate sources of fugitive emissions not regulated by EPA and outside its SIP, or may choose to reduce highway speed limits. Both would likely reduce air emissions, helping a state to maintain compliance with a NAAQS, but neither can be viewed as "enforcing" the NAAQS absent being included in the formal SIP approval process, including a demonstration of modeled and quantifiable results.

Ohio's state implementation plan mirrors EPA's regime with ambient air quality standards that are numerical. Emission sources discharging those pollutants are then subject to control measures that are appropriate for each of the NAAQS. Ohio Admin. Code 3745-15-01(E) (defining "ambient air quality standards"). *See* Ohio's state plan regulations approved by U.S. EPA: https://www.epa.gov/air-quality-implementation-plans/epa-approved-regulations-ohio-sip.

The ANR, on the other hand, cannot be modeled. It has no numerical criteria, no technical control measures, no specific compliance standards. *See* Ohio Admin. Code 375-15-07(A) (prohibiting and declaring public nuisance for substances or combinations of substances like smoke, ashes, dust, fumes, etc. that endanger public health, safety, or welfare or cause damage to property). The ANR's qualitative requirement starkly contrasts with the precision and proof required by 42 U.S.C. § 7410(a) and 40 C.F.R. Part 51 and embodied in emissions control measures, compliance standards, and permit requirements under, for example, Ohio Admin. Code Chapters 3745-14 (nitrogen

oxides), 3745-17 (particulate matter), 3745-18 (sulfur dioxide). As a result, the ANR is not an "enforceable emission limitations and other control measures, means, or techniques" as envisioned by 42 U.S.C. § 7410(a)(2)(A).

Nor is the ANR an element of "a program to provide for the enforcement of the measures" adopted pursuant to § 7410(a)(2)(a), as required by 42 U.S.C. § 7410(a)(2)(C). As mentioned above, provisions required by § 7410(a)(2)(C) must tie back to the compliance requirements that have been modeled and that demonstrated quantifiable results. The ANR does not, and cannot, do that. Rather, it sets its own standard for when a nuisance exists, and that standard in no way connects to the modeled compliance requirements.

An air nuisance violation under the ANR may rest on grounds entirely separate from NAAQS compliance. It is possible that, while addressing a nuisance violation, a facility may reduce emissions of a criteria pollutant. That coincidence of result is not the same as using the ANR for the purpose of "enforcing" or maintaining and achieving the NAAQS. EPA was correct in the March 3, 2020, Federal Register publication when it said that Ohio never "relied on, or ever intended to rely on, this rule for attainment or maintenance of any NAAQS." *Air Plan Approval; Ohio; Technical Amendment*, 85 FR 16309 (Mar. 3, 2020). The potential for an incidental impact on a criteria pollutant through enforcement of the ANR does not change this conclusion.

Commentors misread Ohio's October 19, 2022, letter to the Sixth Circuit Clerk. That letter states, "the State has, on at least one occasion, brought a claim for violation of Ohio Administrative Code 3745-15-07 … that cited exceedances of the federal ambient air-quality standards as evidence of the nuisance." The letter indicates Ohio used an exceedance as evidence of a nuisance. That is not the same as "using the ANR to enforce the NAAQS" as the commentor suggests.

Although the ANR does not enforce the NAAQS, a NAAQS exceedance is relevant evidence of a nuisance under Ohio's Rules of Evidence, and the existence of that evidence is appropriately brought to the attention of a court.

The October 19, 2022, letter was referring to the Republic Steel case, in which Ohio cited a NAAQS exceedance as evidence of a violation of the ANR and the cause of a common law nuisance. Ohio addressed the NAAQS exceedance elsewhere in the complaint in that case through the counts alleging the regulatory and permit violations. These included:

- Count Three – Exceeding lead added limits to process leaded steel.
- Count Four – Exceeding lead emissions limit.
- Count Five – Failure to maintain daily record keeping of vacuum tank degasser for parameters associated with removal efficiency of lead and other emissions.
- Count Six – Failure to take corrective measures for operational parameters associated with removal of lead and other emissions.
- Count Seven – Failure to accurately maintain required record associated with lead and other emissions.
- Count Eight – Failure to report monitoring deviations for lead and other emissions.
- Count Nine – Violation of best available technology permit conditions at FlexCast vacuum tank degasser.

- Counts Ten and Eleven – Failure to comply with the Director's order for stack testing and implementation of an operations and maintenance plan.

Again, in clear contrast to the nuisance claim, these claims address the NAAQS exceedances by enforcing SIP provisions that contain modeled and quantifiable standards.

Citizen suits have generally taken the same approach. They have cited the ANR, but have also cited specific violations that support and enforce the NAAQS. See for example, the complaints filed in *Graff v. Haverhill North Coke Company*, USDC ND Ohio Case No1:09-cv-00670-SJD-KLL and *Fisher v. Perma-Fix of Dayton, Inc.*, USDC Case No. 3:04-cv-00418-CHG. The removal of the ANR will not prevent such cases from going forward.

Comment 4: The commentor states "OEPA cannot, legally, seek to remove the ANR from Ohio's SIP in the manner proposed. As detailed in these comments, an unconstitutional statutory mandate (HB 96) neither requires nor allows OEPA to ignore relevant law and undisputed facts in order to seek removal of the ANR. Even if HB 96 were not unconstitutional, OEPA cannot move forward because it has not made the showing required under the CAA before a revision to any SIP can be approved." **(D.David Altman and Justin D. Newman; AltmanNewman Co. LPA, including comments from The Ohio Environmental Council and Case Western Reserve University)**

Response 4: The comment is based on an allegation that the General Assembly failed to follow appropriate procedures in the passage of HB 96. The question of HB 96's constitutionality is not one that can be addressed by this agency. R.C. 1.47 states that "[i]n enacting a statute, it is presumed that . . . [c]ompliance with the constitutions of the state and of the United States is intended[.]" "It is a well-settled rule that an Act of the General Assembly is entitled to a strong presumption of constitutionality. Moreover, challenged legislation will not be invalidated unless the challenger establishes the unconstitutional nature of the statute beyond a reasonable doubt." *State v. Hochhausler*, 76 Ohio St. 3d 455, 458, 668 N.E.2d 457 (1996) (citation omitted). This agency does not have the authority to pass on the constitutionality of the statute. *S. S. Kresge Co. v. Bowers*, 170 Ohio St. 405, 407 (1960).

The constitutionality of the statute, however, does not impact the authority of Ohio EPA to submit the proposed SIP revision. Irrespective of HB 96's mandate, Ohio EPA has the authority to request removal of a SIP element provided Ohio EPA provides sufficient justification, addresses CAA Section 110(l) and 193, when applicable, and provides an opportunity for public comment. Ohio EPA has prepared such a demonstration and provided an opportunity for public comment. As explained in the preceding comments, Ohio EPA has an appropriate basis for removal of the ANR from the SIP.

Comment 5: The commentor states "OEPA's stated intention to maintain the ANR as part of state regulations and enforce it "where appropriate" is an

illusory reassurance, at best. First, the ANR is the deterrent to Ohio's failure to exercise its duty. Second, over the years OEPA has proven itself unable, and often unwilling, to take effective enforcement action against the worst ANR offenders. Third, even if OEPA were to attempt to do so in the future, HB 96—in a second unconstitutional provision—places significant limits on OEPA's ability to enforce the ANR (and all other laws, regulations, permits, etc. for which OEPA has authority). See, revisions to RC 3704.01(H), 3704.09(B)-(C), 3704.031(B). These restrictions include prohibiting OEPA from using community air monitoring data as evidence in any type of enforcement and prohibits the Director from conducting community air monitoring. Such strangleholds on OEPA's ANR-related enforcement capabilities underscore the importance and necessity of citizen enforcement." **(D.David Altman and Justin D. Newman; AltmanNewman Co. LPA, including comments from The Ohio Environmental Council and Case Western Reserve University)**

Response 5: As stated in response one, Ohio EPA intends to retain and implement the ANR as it has for the past 53 years. The commentor cites concerns over additional revisions made to the ORC under HB 96, including restrictions on the use of community air monitoring. HB 96 did add provisions regarding community air monitors, which includes monitoring associated with technology such as low-cost sensors. The changes related to non-regulatory monitors are not relevant to the action of the request to withdraw of the ANR from the SIP. For purposes of providing information in response to this comment, Ohio EPA has not utilized non-regulatory monitoring data for regulatory purposes. Ohio EPA operates a robust federally approved air monitoring program using technology approved for the purpose of compliance with the NAAQS. HB 96 does not prohibit Ohio EPA from operating non-regulatory monitors such as sensors, but restricts how the data may be utilized.

Comment 6: The commentor states "despite all of the clear data revealing the scope of the health risks associated with air pollution in Middletown, OEPA has deemed the five-county *region* in which Ms. Ballinger lives to be "in attainment" based on the regional NAAQS monitoring. That is because, in that larger geographic region, the fenceline communities around air

nuisance sources are overburdened by the air nuisance releases *that never reach the regional air quality monitors.* Moreover, data from NAAQS monitors in areas of high readings of particulate are averaged with data from NAAQS monitors in areas of lower readings of particulate. When all that data is averaged together and the highest and lowest air pollution readings are excluded and three years of data are averaged, the dangerous high level waves of pollution in Middletown are "diluted" out of existence. Thus, a region can technically be in attainment, while adults and children living in fenceline communities within that region continue to breathe in air pollution at levels that, on their own, regularly exceed NAAQS. *The ANR, operates as a check in these fenceline communities by leading to reductions of NAAQS pollutants that endanger health and welfare, regardless of what is measured at the regional monitors*. In Ohio the ANR has served as the fail-safe means of preventing circumvention of the NAAQS." **(D.David Altman and Justin D. Newman; AltmanNewman Co. LPA, including comments from The Ohio Environmental Council and Case Western Reserve University)**

Response 6: It is factual that Butler County, Ohio is currently designated in attainment for all the federal PM2.5 NAAQS. However, U.S. EPA recently promulgated a new annual PM2.5 standard of 9.0 ug/m3 in 2024 and designations have yet to be finalized for the new standard. However, Ohio EPA did provide recommended designations to U.S. EPA on February 4, 2025 (supplemented April 9, 2025), recommending that Butler County be designated in nonattainment of the 2024 annual PM2.5 standard based upon ambient air quality data from our regulatory monitors collected between 2021 to 2023 and 2022 to 2024. When final designations for any NAAQS occurs, areas designated nonattainment are then required to determine any necessary control requirements needed to bring the area into attainment by the attainment date.

NAAQS are selected by the U.S. EPA Administrator at the conclusion of a public process that starts with a comprehensive review of the relevant scientific literature. The literature is summarized and conclusions are presented in the Integrated Science Assessment (ISA), the Risk and Exposure Assessment (REA) document, and the Policy Assessment (PA). Each of these three documents is released for public comment and

public peer review by the Clean Air Scientific Advisory Committee (CASAC). U.S. EPA selects a level and form considering all the information and establishes a NAAQS that is ““requisite” to protect public health with an adequate margin of safety sufficiently guided the EPA's discretion.”

Monitoring data handling procedures follow federal requirements that are established when U.S. EPA reviews and finalizes regulations regarding a new or revised NAAQS. Each NAAQS will have a level and a form, for example, the 2024 revised PM2.5 standard was set at a level of 9.0 ug/m3 and the form is a 3-year average of annual 90th percentile values. Therefore, the level and form of the standard are decided by U.S. EPA in establishing that NAAQS and Ohio EPA follows the required data handling conventions to determine compliance with those NAAQS.

Ohio EPA has one of the largest networks of air monitoring sites in the country, often going beyond federal minimum monitoring requirements. The sites include many locations with different purposes, including understanding impacts regionally, on impacts on a neighborhood or impacts from particular sources. Ohio EPA sites its air monitors, selects the types of air monitors, and handles the data for determining compliance with the NAAQS as required in accordance with 40 CFR Chapter 1, Subchapter C. Ohio EPA goes through a rigorous quality assurance process to ensure the integrity of that data.

As noted elsewhere in this response document and in the demonstration made available for public comment, Ohio EPA continues to assert that the ANR is not an enforceable emission limitation or other control measure, means, or technique. Nor does it provide for the enforcement of such measures.

Ohio EPA’s local air agency, Southwest Ohio Air Quality Agency, continues to work closely with the community to investigate any complaints related to this facility. The agency also is in contact with Middletown Works regarding their emissions, and when necessary has taken appropriate action to bring the facility into compliance with Ohio regulations, including the ANR, and permit requirements. The ANR does not, however, meet the CAA’s standards for enforcing, achieving, or

maintaining the NAAQS, and as a result are not appropriately a part of SIP.

Comment 7: The commentor states "The history of the formation of Ohio's SIP shows that the ANR was not only initially included as a means for ensuring Ohio's air quality would meet any NAAQS promulgated by the USEPA under the CAA, but also deliberately kept in the SIP to achieve that purpose for decades. While Ohio's first SIP on May 31, 1972, was vacated by the courts a year later, Ohio revised its plan, approved by USEPA on April 15, 1974. *The ANR was included as part of Ohio's 1974 federally-approved SIP* (then codified at AP-2-07). *See* 49 Fed. Reg. 32,181 (Aug. 13, 1994)."

Note: the commentors include exhibit 1 which is a declaration from William M. Auberle, formerly employed by a local air agency in Ohio, that the inclusion of the ANR in the SIP was deliberate.

(D.David Altman and Justin D. Newman; AltmanNewman Co. LPA, including comments from The Ohio Environmental Council and Case Western Reserve University)

Response 7: As stated elsewhere, Ohio EPA understands the history of promulgation of the ANR and inclusion in Ohio's SIP and disagrees that it was intentional to serve the purpose of compliance with the NAAQS. Ohio EPA has performed the required analysis and included the appropriate demonstrations to request removal from the SIP for the reasons outlined within our request.

The question of whether Ohio EPA ever intended the ANR to be in the SIP or not is irrelevant. Whether the submittal was intentional or not does not provide a basis of whether the rule is appropriate or not as part of the SIP. As U.S. EPA has explained with other states, this type of rule is not appropriate for inclusion in the SIP because it does not contain clear quantifiable standards. Ohio EPA continues to assert the ANR is not an enforceable emission limitation or other control measure, means, or technique. Nor does it provide for the enforcement of such measures, so it is not a required element of Ohio's SIP.

Comment 8: The commentor states "The USEPA has also, on at least three separate occasions, deliberately reaffirmed the importance of the ANR to CAA enforcement in Ohio. In 1999, USEPA Region 5 advised Ohio that USEPA would object to CAA facility operating permits that did not include the ANR and other SIP provisions among their federally enforceable terms and conditions. Ex. 3, June 18, 1999 letter. In 2012, the USEPA again affirmed that the ANR was a federally enforceable provision within Ohio's permits in response to an inquiry by Ohio. Ex. 4, April 25, 2012, letter."

Note: the commentors included exhibits referenced above are included in Exhibit one in the full comments attached.

(D.David Altman and Justin D. Newman; AltmanNewman Co. LPA, including comments from The Ohio Environmental Council and Case Western Reserve University)

Response 8: Ohio EPA does not dispute that so long as the ANR is a part of the SIP the ANR is enforceable in federal court. As such, the ANR is appropriately included in federally enforceable provisions of any Title V permit. That does not, however, address whether the ANR is appropriately included in the SIP. For the reasons previously stated, the ANR is not appropriately included in the SIP.

Comment 9: The commentors elaborated that even if HB 96 were not unconstitutional, OEPA's proposal to remove the ANR cannot be approved because it is based on factors that have already been rejected by the Sixth Circuit when considering USEPA's improper removal of the ANR in 2020. See *Sierra Club v. United States EPA*, 60 F.4th 1008 (6th Cir. 2023). The State of Ohio was an intervenor in that appeal and is well aware that its arguments are factually and legally baseless.

A. The ANR has a connection to the implementation, maintenance, or enforcement of the NAAQS.

B. The ANR is federally enforceable under the CAA.

(D.David Altman and Justin D. Newman; AltmanNewman Co. LPA, including comments from The Ohio Environmental Council and Case Western Reserve University)

Response 9: The court in *Sierra Club v. United States EPA* discussed the ANR in the context of standing, determining that the past use of the ANR in citizen suits gave petitioners standing to challenge U.S. EPA's removal of the ANR from Ohio's SIP. While the past use was determined to provide standing, the Court ultimately remanded U.S. EPA's action without vacating U.S. EPA's action.

The Court made no determination of whether U.S. EPA's removal of the ANR from Ohio's SIP was lawful. It noted that the parties in the case had focused "largely on what statutory provision the EPA should have used to propose removal of the ANR," and that, following the Court's remand, the EPA might still "be able to justify removing the ANR from Ohio's SIP." *Sierra Club*, 60 F.4th at 1022–23.

Comment 10: The commentors detailed comments assert Ohio EPA has failed to demonstrate that removing the ANR from the SIP will not interfere with other CAA requirements.

""[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress…*or any other applicable requirement of this Act*." 42 U.S.C.S. § 7410(*l*) (CAA § 110(*l*)) (emphasis added). Thus, *to obtain approval for a SIP revision, the state must demonstrate that the proposed SIP revision will not interfere with attainment, maintenance, or enforcement of the NAAQS or interfere with any other applicable CAA requirement* (i.e. a "110(*l*) demonstration")."

"OEPA's 110(*l*) demonstration cannot support removing the ANR from Ohio's SIP because OEPA has failed to demonstrate that that removing the ANR will not interfere with attainment, maintenance, or enforcement of the NAAQS."

"To the contrary, the ANR acts as a failsafe to address nuisance conditions that exist despite existing emissions limits."

"OEPA's 110(*l*) demonstration further fails because it does not demonstrate that removal of the ANR will not interfere with *other* applicable CAA requirements." The commentors reference anti-backsliding requirements requiring equivalent or greater reductions and significant deterioration and visibility protection requirements.

Anti-backsliding

"In its "193 demonstration," OEPA espouses two reasons why removing the ANR does not violate the antibacksliding protections. Both reasons are based on incorrect interpretations of CAA section 193 and, therefore, do not support removal of the ANR. "

"First, OEPA incorrectly implies that the ANR is not a "control requirement" because it does not impose specific emissions limitations. To the contrary, USEPA explained clearly:
The CAA does not specifically define what qualifies as a "control requirement" in the context of section 110 SIPs, and EPA therefore interprets the term broadly in accordance with its plain meaning, i.e. that it refers to any "requirement" that imposes some form of "control" with respect to any of the NAAQS pollutants. The term "control requirement" is similar to the language in CAA section 110(a)(2)(A) referring to "emissions limitations and other control measures, means, or techniques." As explained and illustrated by the specific examples in a previous comment response, the ANR has been invoked on multiple occasions with the goal and ultimate outcome of limiting emissions of criteria pollutants and their precursors. Thus, the ANR has been used as a measure, means, or technique, to control relevant emissions, which means that it squarely falls within the definition of a "control requirement" as the term is used in CAA section 193."

"Second, OEPA argues that the anti-backsliding provision is met because areas that were classified as "nonattainment" prior to 1990 have been redesignated to "maintenance" areas. OEPA's interpretation runs contrary to the fundamental purpose of the anti-backsliding provision, which is to *prevent a reversal in progress made* in improving air quality. A state cannot, as OEPA argues, remove pre-1990 control requirements just because a nonattainment area is reclassified to a

maintenance area. That is because it was those control requirements that brought the area out of nonattainment in the first place. Again, removing a control requirement without identifying or promulgating any provision to off-set the increase in emissions that will result—as OEPA is proposing to do by the removal of the ANR—will simply cause the area to revert back to nonattainment. This is the precise situation that Section 193 was designed to prevent."

"OEPA effectively admits it cannot show that removing the ANR will not interfere with the anti-backsliding requirements by bemoaning the fact it has never quantified the amount of air pollution reduction that is achieved via the presence of the ANR – either as a result of direct citizen enforcement, OEPA enforcement, or the deterrent effect it has on industry operations and air pollution releases. Yet, because the ANR only ever reduces air emission by eliminating nuisance-level emissions, its removal would necessarily result only in *fewer emissions reductions*, *not equivalent or greater emissions reductions*."

Significant deterioration and visibility protection

"Similarly, OEPA's removal request fails to discuss or demonstrate that removing the ANR will not interfere with the CAA's prevention of significant deterioration requirements or visibility requirements. The purposes of preventing significant deterioration of air quality and protecting visibility include, e.g.:

1) protecting "public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air, notwithstanding attainment and maintenance of all [NAAQS]" and
2) assuring "that any decision to permit increased air pollution in any area to which this section applies is made *only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision making process*."

"Overall, for areas in attainment where the prevention of significant deterioration standards apply, OEPA is required to show that any increase in pollutants caused by unabated nuisances (i.e. from the removal of the ANR) is within allowable incremental increases. OEPA has failed to make such showing.

"OEPA's reasoning that the ANR cannot be relied on in the SIP because OEPA cannot *model* the impact of the ANR does not support its removal request. *Actual data* from air monitoring events, whether at NAAQS monitors or within the affected communities, is direct evidence of the rise or fall in emission levels. In fact, OEPA's 110(*l*) demonstration recognizes that "Ohio's ANR may have an impact on emissions." OEPA's claim that it cannot quantify the level of reduction achieved is merely an admission that the ANR does, in fact, directly impact air quality."

Other applicable requirements

"Finally, outside of the anti-backsliding provision, OEPA has failed to even identify any other "applicable requirements" that are relevant to its request to remove the ANR. Without identifying those other requirements, the public cannot provide informed comments on any claim that removing the ANR will not interfere with other CAA requirements. OEPA's reliance on USEPA's 2005 draft guidance on demonstrating noninterference under section 110(*l*) merely highlights the insufficiency of OEPA's section 110(*l*) demonstration. For example, the guidance provides a list of numerous other "applicable requirements" that must be met in order to modify a SIP, including, e.g., Air Toxics and regional haze, which may be problematic when removing the ANR. The guidance also makes clear any noninterference demonstration must include a showing that the revision will not interfere with compliance of other states (i.e. section 110(a)(2)(D) "good neighbor" requirements). OEPA has made no showing that any of these other requirements will be met if the ANR is removed from the SIP.
(D.David Altman and Justin D. Newman; AltmanNewman Co. LPA, including comments from The Ohio Environmental Council and Case Western Reserve University)

Response 10: Ohio has demonstrated removal of the ANR will not increase emissions and will continue to control emissions that impact the NAAQS through

our NAAQS SIP regulatory programs. As a result, removal of the ANR will not interfere with any other applicable requirement, and there will not be a degradation in air quality as a result of removing the ANR from the SIP.

The commentor implies that because the "ANR acts as a failsafe to address nuisance conditions that exist ***despite existing emissions limits***." The commentor's speculation that the ANR could act as a failsafe relies on the type of speculation that the Sixth Circuit has determined is improper when interpreting 42 U.S.C. §7410(*l*). It has noted that the statute "prohibits approval of a revision that " would interfere" with an applicable requirement," and it has rejected an argument, like the commentors, that "would substitute 'could' for 'would.'" *Ky. Res. Council, Inc. v. EPA* , 467 F.3d 986, 994 (6th Cir. 2006). There is certainly a value in addressing nuisance conditions, which is why Ohio EPA intends to retain the ANR, but the ANR is neither a substitute for the modeled standards that support compliance with the NAAQS nor is it used for that purpose.

The commentor goes on to say the ANR therefore cannot be removed because it "violates section 110(*l*) by interfering with attainment, maintenance, and enforcement of the NAAQS." Ohio EPA disagrees. There are many state requirements and voluntary programs that exist and may assist with reducing emissions but that does not require them to be a part of a SIP. For example, Ohio EPA has provided funding to organizations that hold lawnmower exchange programs to replace gasoline lawnmowers with electric lawnmowers. The purpose of this program is to assist in reducing VOC emissions in the Cleveland ozone nonattainment area to help attain the ozone NAAQS. That does not mean it should be a required SIP element and the owner of an electric lawnmower can never buy a gas lawnmower again. As stated in our demonstration "while the ANR may improve air quality, it does not "enforce" the NAAQS" and "A State may, for its own purposes however, have other regulations that have the effect of improving air quality, but which do not have NAAQS compliance implications. And unless those provisions were tied to the modeled air impacts and presented to U.S. EPA for approval as part of the SIP, they cannot constitute required elements of the SIP".

The commentors also suggest Ohio EPA failed to demonstrate removal of the ANR will not interfere with "other" applicable requirements, including substitute emissions under the anti-backsliding provisions and prevention of significant deterioration (PSD)/visibility requirements. Ohio EPA continues to maintain that the ANR is not a control requirement for the reasons identified in our demonstration. In our demonstration we also identified the numerous regulations we have that are control requirements.

With respect to the provisions of substitute emissions under the anti-backsliding provisions, there are no remaining nonattainment areas in Ohio that were nonattainment before November 15, 1990; therefore, the need to substitute emissions under the anti-backsliding provisions of CAA Section 193 do not apply. Ohio EPA has never relied on the ANR as a part of our Regional Haze SIP that addresses visibility requirements. PSD is a program that is addressed as a part of new source review (NSR), not as a part of SIP attainment planning. Ohio EPA continues to implement the PSD program in accordance with our SIP approved NSR program under OAC Chapter 3745-31, as outlined and discussed in great detail in our demonstration.

The commentors imply "OEPA effectively admits it cannot show that removing the ANR will not interfere with the anti-backsliding requirements by bemoaning the fact it has never quantified the amount of air pollution reduction that is achieved via the presence of the ANR" …. With removal resulting "only in *fewer emissions reductions*, *not equivalent or greater emissions reductions*." Ohio EPA has never relied on the ANR for demonstrating compliance with the NAAQS. The ANR cannot be modeled. It has no numerical criteria, no technical control measures, no specific compliance standards. Ohio EPA has many programs that may sometimes lead to fewer and sometimes more reductions, and are not necessary components of Ohio's SIP.

Comment 11: The commentor states "OEPA tries to bolster its flawed ANR removal request by stating that other states have removed "their respective ANR as part of the SIP." OEPA's vague and factually bald assertion ignores both U.S. Supreme Court precedent and USEPA's evaluation of this

exact issue when reinstating the ANR to Ohio's SIP. In its reinstatement of the ANR into Ohio's SIP, USEPA correctly rejected the idea that because other states have removed their nuisance provisions from their SIPs, Ohio's ANR must also be removed."

"Instead, USEPA recognized the U.S. Supreme Court's directive that each state is given "wide discretion" in formulating its SIP and that Congress left "considerable latitude" to the states in determining how the NAAQS would be met. 90 Fed. Reg. 6811, 6814 (Jan. 21, 2025) (quoting *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 250 (1976); *Train* v. *Nat. Res. Def. Council, Inc.,* 421 U.S. 60, 87 (1975)). However, any proposed revision must include the required showing that air quality will not degrade. Thus, USEPA correctly reasoned that "evaluating a state's SIP submission requesting to remove a nuisance provision from the state's SIP…would include an evaluation of the specific nuisance provision's connection to the implementation and enforcement of the NAAQS." *Id.* (internal quotations removed). Evaluating Ohio's specific nuisance provision, USEPA acknowledged the connection between the types of pollutants identified in the ANR (e.g. smoke, ashes, fumes, gases, and vapors) and several NAAQS (e.g. particulate matter, sulfur dioxide, lead, and ozone), ultimately concluding that "the Ohio ANR has a demonstrated connection to the enforcement of the NAAQS." OEPA cites no precedent that undermines USEPA's finding of a demonstrated nexus between Ohio's ANR and the NAAQS. "

"In its FAQ page on the ANR removal, OEPA identifies California and New York as states that have removed their "respective Air Nuisance Rule." OEPA provides no facts or evaluation of those specific nuisance provisions or their connection to implementation and enforcement of the NAAQS. In fact, the removal of California and New York's provisions provides no support for removal of Ohio's ANR. Unlike Ohio's ANR, California's nuisance provision failed to identify a single type of NAAQS-connected pollutant, making only a vague reference to "air contaminants." While New York's nuisance provision did identify specific types of pollutants, it was similar to California's in that there was no history of use of this nuisance rule by citizens to enforce the NAAQS and there was no opposition to the rulemaking removing it. In sharp contrast, there is a clear history of use of the ANR as a means to

enforce the NAAQS in Ohio and USEPA received over 1,000 comments opposing the Ohio SIP change. Finally, unlike the ANR, USEPA's removal of California and New York's nuisance provisions was not challenged in and, thus, not upheld by a court."" **(D.David Altman and Justin D. Newman; AltmanNewman Co. LPA, including comments from The Ohio Environmental Council and Case Western Reserve University)**

Response 11: In making its determination to reverse its removal of the ANR from the SIP, U.S. EPA did not yet have Ohio EPA's demonstration before it. U.S. EPA appears to have acknowledged the potential significance of that demonstration in any future consideration of the ANR when it invited Ohio to submit a request for removal. Ohio EPA has now made that demonstration, which on its face shows that the removal of the ANR complies with the requirements of the Clean Air Act and regulations promulgated thereunder.

U.S. EPA was correct in stating that the removal of the ANR from each state's SIP "requires a distinct analysis based on the nature of the nuisance rule at issue." At the time U.S. EPA made that statement, it did not yet have Ohio's demonstration. However, the demonstration shows, albeit not through direct comparison, that there is no significant difference between the grounds for removing the ANR of other states and removing Ohio's ANR. As a result, the outcome of U.S. EPA's consideration of those other states is relevant to assuring a consistent application of the law, and Ohio appropriately raised U.S. EPA's past action in requesting consideration of the SIP revision.

Comment 12: Some commentors assert that HB 96 is unconstitutional, as can be seen in comment 4. **(D.David Altman and Justin D. Newman; AltmanNewman Co. LPA, including comments from The Ohio Environmental Council and Case Western Reserve University)**

One commentor states **"**The provision in House Bill 96 that removes the Air Nuisance rule is unconstitutional because it overreaches the bill's limited subject. Article II Section 15(D) of the Ohio Constitution states that "No bill shall contain more than one subject, which shall be clearly expressed in its title." The purpose of this provision, commonly referred to as the single-subject or one-subject rule, is to ensure that bills are

passed with transparency, accountability, and fair legislative practices. The removal of the ANR was buried in House Bill 96, which is a 3,156-page state operating budget. The provision requiring removal of the Air Nuisance Rule has no relationship with the subject of the state budget, in violation of the one-subject rule, and is therefore unconstitutional. The Ohio Supreme Court has used the one-subject rule to strike down a statute passed through the budget bill before, stating there must be more than a tangential link between subjects for them to be unified under one bill. In *City of Cleveland v. State of Ohio*, Cleveland challenged amendments to the Ohio Revised Code, made through the State's budget bill, which would regulate industrially produced trans-fats. The Ohio Supreme Court acknowledged that as long as a common purpose or relationship exists between the topics, a bill can have more than one topic, but the subject matter must be unified. Further, the court acknowledged that the analysis under a budget bill is complicated because many items fall into that category. However, the court rejected the argument that any provision that even slightly impacts the budget bill may be included, because that would defeat the purpose of the one-subject rule. Ultimately, the link between the trans-fat regulation and the budget was such a tangential link that the court struck it from the bill." **(Caitlin Funk and Fallon Goodlin, Case Western Reserve University)**

"Similarly, here, there is no connection between the ANR and the state operating budget. ANR claims are made by citizens, and citizens bear the cost of that litigation. Because there is no connection between the two, HB 96 is in violation of the one-subject rule and unconstitutional under the Ohio Constitution." **(Caitlin Funk and Fallon Goodlin, Case Western Reserve University)**

Response 12: As discussed in the response to Comment 4, this agency does not have the authority to pass on the constitutionality of the statute. *S. S. Kresge Co. v. Bowers*, 170 Ohio St. 405, 407 (1960). The constitutionality of the statute, however, does not impact the authority of Ohio EPA to submit the proposed SIP revision. Irrespective of HB 96's mandate, Ohio EPA has the authority to request removal of a SIP element provided Ohio EPA provides sufficient justification, addresses CAA Section 110(l) and 193, when applicable, and provides an opportunity for public comment.

Ohio EPA has prepared such a demonstration and provided an opportunity for public comment. As explained in the preceding comments, Ohio EPA has an appropriate basis for removal of the ANR from the SIP.

Comment 13: Commentor asserts "Unlike general Ohio state tort claims, the ANR specifically defines air pollution as a public nuisance and permits individuals to bring lawsuits for air pollution endangering public health or property with potential to identify any Clean Air Act violations in the process. The Sixth Circuit has recognized that state nuisance lawsuits are not a sufficient substitute for claims brought under the Air Nuisance Rule. The two lawsuits are distinctly different in both goals and remedies. Air Nuisance Rule claims serve the public interest rather than personal gain—plaintiffs bring these actions on behalf of society as a whole to resolve public nuisances, which in turn can enforce Clean Air Act standards, including NAAQS. Nuisance actions brought as general tort actions seek remedies for specific harms, with benefits that may not extend beyond the affected parties. Under Ohio law, private citizens lack standing to maintain a private action for a public nuisance unless they can prove they have suffered some special injury or particular damage not incurred by the public generally. Authorities disagree on what constitutes a special injury, but the majority view requires an injury that differs in kind, not merely in degree, from injuries suffered by other members of the public. Thus, because private citizens must show a distinct injury from the public, and because nuisance actions involve fact-specific analysis weighing relative conveniences and comparative injuries between parties, the remedy differs fundamentally from claims brought under the Air Nuisance Rule addressing the public's injury through remedying the nuisance and triggering enforcement."
"Air Nuisance Rule claims are unique from state tort claims because it is a remedial statute that offers citizens an additional compliance remedy. For example, in *Fisher v. Perma-Fix of Dayton, Inc*., Barbara Fisher brought an ANR claim against Perma-fix, which was creating an alleged nuisance by releasing pollutants into the air. Perma-Fix argued that the ANR was too vague and subjective to be in accordance with the CAA citizen suit provision. The Southern District of Ohio disagreed and denied Perma-Fix's Motion for Judgment on the Pleadings. Instead, the Court held that the purpose of the ANR's citizen suit provision is to

provide an additional remedy for pollution, and, to achieve that remedial goal, the ANR is not limited to specific emissions standards, instead categorizing emissions as a public nuisance. So, the ability to bring a claim under the Air Nuisance Rule makes it unique from public nuisance claims that require specific injuries, making state tort theory an inadequate replacement for the Air Nuisance Rule."

"Not only has the state of Ohio recognized the importance of citizens being free of harmful pollution by codifying it as a public nuisance,[1] but it also has the Ohio Air Pollution Control Act. Importantly, the Act does not provide citizens with a right of action to remedy pollution. It simply allows a citizen who believes "a violation [of an air pollution rule] has occurred" to file a complaint with the Ohio EPA.[2] Once filed, only the attorney general and director of environmental protection "may"[3] bring charges for violations of the administrative regulations related to air pollution control.[4] Although the Act instructs the director of the Ohio EPA to conduct a prompt investigation once filed, the director has the discretion to dismiss the complaint if they determine that prior violations have been terminated or that future violations of the same kind are unlikely to occur.[5] This permissive "may" language creates a significant enforcement gap, as state authorities face no statutory obligation to pursue violators when clear evidence of past harm exists. Thus, there is no guarantee that polluters will be charged by the state authority, leaving citizens affected by pollution with no guarantee of relief. Given the insufficient remedy available through the Air Pollution Control Act, which relies on other parties to bring an action, Ohio citizens remain helpless with no meaningful tool to fight air quality nuisances by without the ANR."**(Caitlin Funk and Fallon Goodlin, Case Western Reserve University)**

Response 13: The commentors suggests that there are differences in standing requirements applicable to bringing a common law nuisance action in state court and a case based on the ANR in federal court. For that

[1] *Fisher v. Perma-Fix of Dayton, Inc.*, No. 3:04-CV-418, 2006 U.S. Dist., WL 212076, at *5.
[2] *Id*. at § 3745.08(A).
[3] *Id.* at § 3745.08(B).
[4] *Hager v. Waste Techs. Indus.*, 2002-Ohio-3466, 2002 WL 1483913 at *8 n.5 (Ohio Ct. App. 2002) (citing Ohio Rev. Code § 3704.03, 3704.06).
[5] Ohio Rev. Code § 3745.08(B).

reason, the commentors favor retention of the ANR in the SIP. This policy preference is not one that goes to the criteria applicable to a request to revise the SIP, nor is it consistent with the policy preference established by the General Assembly in HB 96.

Comment 14: Commentors state the ANR is an important backstop and tool for citizens to take action against polluters when the state EPA is unable or refuses to do so on their behalf. **(Various)**

Response 14: Citizens have the ability to file verified complaints in Ohio under OAC rule 3845-45-12 (https://codes.ohio.gov/ohio-administrative-code/rule-3745-49-12). This process provides for formal written and appealable agency response to a complaint. If a citizen files a verified complaint with the Ohio EPA, under regulations Ohio EPA must act on this complaint. It is important to note that if the verified complaint is reviewed and dismissed for any reason, the dismissal is considered a final decision of the Director and is considered appealable to the Ohio Environmental Review Appeals Commission (ERAC).

In addition, the actual use of the ANR in citizen suits has been in conjunction with the enforcement of regulations that, unlike the ANR, have modeled and measurable impact on compliance with the NAAQS and that are appropriately included in the SIP. It is enforcement of these other regulations—and not any ANR claim—that has assured Ohio's compliance with the NAAQS.

In Support of Removing the Air Nuisance Rule (ANR) from the SIP

Comment 15: Commentors provided support for the ANR removal from the SIP, citing Ohio EPA's removal of the ANR from the SIP is necessary to comply with R.C. 3704.031(B) (HB 96). **(Stephanie Kromer, Ohio Oil and Gas Association) (Michael E. Born, Shumaker) (Joint letter James Lee, The Ohio Manufacturers Association; Eric B. Gallon, Ohio Chamber of Commerce and Ohio Chemistry Technology Council)**

Response 15: Thank you for your comment.

Comment 16: One commentor also notes that the ANR should not have been included in Ohio's SIP in the first place, and Ohio EPA's removal of the ANR will have no impact on Ohio's attainment or maintenance of the NAAQS. Further the commentor notes that a SIP must include "enforceable emission limitations and other control measures, means, or techniques" (42 U.S.C.§ 7410(a)(2)(A)), and include "a program to provide for the enforcement of the measures" (42 U.S.C. § 7410(a)(2)(C)), of which Ohio's ANR is neither of those. Lastly, the commentor concurs with Ohio EPA's assessment in the CAA § 110(l) Demonstration that the ANR cannot be modeled, has no numerical criteria, no technical control measures, and no specific compliance standards. As such, the ANR is not an "enforceable emission limitations and other control measures, means, or techniques" that can be relied upon in demonstrating that Ohio has an approvable SIP, nor does the ANR tie back or relate to any NAAQS compliance requirements for purposes of enforcement to achieve and maintain the NAAQS.

The commentor does note that while the ANR may have some positive impacts on air quality, it is entirely unrelated to NAAQS implementation, maintenance, or enforcement and, therefore, has no application and is not appropriate for inclusion in a federally enforceable SIP. **(Stephanie Kromer, Ohio Oil and Gas Association)**

A commentor states "Importantly, regardless of the requirements of HB 96, the ANR should never have been incorporated into Ohio's SIP. Ohio's ANR cannot be used to meet specific air quality standards and serves no purpose for the SIP. It is also the only rule of its kind in a SIP within Region V. As such, OEPA's proposed removal is not only required but long overdue." **(Michael E. Born, Shumaker)**

Another commentor asserts "the ANR was included in error in the early 1970s when thousands of state and local agency regulations were submitted to EPA for incorporation into SIPs to fulfill the new federal requirements." The commentor explains that due to the volume of regulations submitted, U.S. EPA was unable to provide a thorough review and the process was rushed causing provisions to be approved with no connection to the NAAQS. The commentor discusses how several other states have successfully had air nuisance provisions

removed from SIPs. The commentor provides several attachments with additional information. The commentor even cites "in at least two instances, EPA refused to include a nuisance rule in a SIP because "[t]he EPA's authority to approve SIPs extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of section 110 of the CAA" ." **(Joint letter James Lee, The Ohio Manufacturers Association; Eric B. Gallon, Ohio Chamber of Commerce and Ohio Chemistry Technology Council)**

Response 16: Thank you for your comment. Ohio EPA concurs with your assessments.

Comment 17: Commentor contends that Ohio EPA has demonstrated the removal of the ANR will not interfere with the attainment or maintenance of the NAAQS or any other CAA requirements, will not result in increased emissions, that the ANR did not impose enforceable emission limits, and that all quantitative control measures in Ohio's SIP will remain in place. Commentor states "although "the statute does not directly speak to how a determination of 'interference' is to be made," the United States Court of Appeals for the Sixth Circuit has held that an interpretation that "allows the agency to approve a SIP revision unless the agency finds it will make the air quality worse . . . is reasonable." *Kentucky Res. Council, Inc. v. EPA*, 467 F.3d 986, 995 (6th Cir. 2006) (cleaned up). *See also Env't Commt. of the Florida Elec. Power Coordinating Grp., Inc. v. EPA*, 94 F.4th 77, 92 (2024) ("EPA may not approve a SIP revision . . . that . . . would cause the state to backslide or come out of compliance with the Clean Air Act's requirements"). The Sixth Circuit has also held that Section 110(*l*) does not require "EPA [to] reject each and every SIP revision that presents some remote possibility for interference." *Kentucky Res. Council*, 467 F.3d at 994." Lastly, commentor provides details regarding CAA Section 193 requirements and states it does not apply to the removal of the ANR as the ANR is not a control requirement. They state this is supported by a recent interpretive issue under the Clean Water Act. Please see the attached comment letter for full details. **(Joint letter James Lee, The Ohio Manufacturers Association; Eric B. Gallon, Ohio Chamber of Commerce and Ohio Chemistry Technology Council)**

Response 17: Thank you for your comment.

Comment 18: The commentor points out the "ANR is a *state law* prohibition of air pollution nuisances to which there is no federal counterpart under the CAA. Its inclusion in Ohio's SIP makes a violation of the ANR subject to enforcement in federal court via CAA citizen suits. However, as discussed above, the ANR is entirely unrelated to the attainment and maintenance of the NAAQS and, thus, any citizen suit purportedly brought to enforce the ANR provision of Ohio's SIP is inherently unfounded. Further, the NAAQS are broad-based air quality standards for certain air pollutants which are not directly applicable to or enforceable against regulated facilities. Yet, that is how such ANR citizen suits have been used – a particular facility or group of facilities is identified as over-emitting criteria pollutants, brought into federal court for causing a nuisance under the guise of being a CAA violator specifically, for causing a NAAQS violation), and targeted to implement costly emission control measures and/or pay large sums of money in damages." **(Stephanie Kromer, Ohio Oil and Gas Association)**

"There is no legally protected interest in adjudicating state-law nuisance claims in federal court. Ohio EPA's removal of the ANR from Ohio's SIP will prevent unfounded CAA citizen suits and help keep such claims in state court." **(Stephanie Kromer, Ohio Oil and Gas Association)**

Response 18: Thank you for your comment.

Comment 19: The commentor points out Ohio EPA left OAC Chapter 3745-21 (Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards) off the list of SIP approved regulations addressing the NAAQS. **(Joint letter James Lee, The Ohio Manufacturers Association; Eric B. Gallon, Ohio Chamber of Commerce and Ohio Chemistry Technology Council)**

Response 19: Thank you for pointing out this omission. It will be added to the final version.

Comment 20: Commentor notes Ohio EPA's demonstration notes the ANR will remain fully in effect in state law, "which will continue to empower Ohio EPA and the Ohio Attorney General with discretionary authority to implement corrective actions if necessary to ensure compliance with the requirements of the CAA. Implementation of the ANR at the state level, rather than through a federally approved SIP, will be similar to other approaches that Ohio EPA has used for decades to successfully regulate emissions of air toxic contaminants in the State of Ohio (for example, Ohio EPA's Air Toxic Policy). The Air Toxics Policy is not part of Ohio's SIP, but still effectively controls air toxics within the state. Even with the removal of the ANR from the Ohio SIP, the ANR remains fully in effect in state law and Ohio EPA will continue to have the authority to enforce the ANR as needed." **(Joint letter James Lee, The Ohio Manufacturers Association; Eric B. Gallon, Ohio Chamber of Commerce and Ohio Chemistry Technology Council)**

Response 20: Ohio EPA will be maintaining the ANR as discussed in response one above. Thank you for your comment.

End of Response to Comments